

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
Case No: [ ]

WASCO LLC,  
  
Plaintiff,  
v.  
  
NORTHROP GRUMMAN  
CORPORATION,  
CNA HOLDINGS LLC,  
CHEMTRONICS, INC.,  
WMI II, LLC, MCGREGOR II, LLC,  
SAMSONITE LLC  
GILDAN USA INC., DYNA-DIGGR LLC,  
BLUE RIDGE INDUSTRIAL  
SUPPORT CO. &  
SMOKEY MOUNTAIN PALLET, INC.  
  
Defendants.

**COMPLAINT**

Plaintiff WASCO LLC (“WASCO”), complaining of Defendants Northrop Grumman Corporation (“Northrop”), CNA Holdings LLC (“CNA”), Chemtronics, Inc. (“Chemtronics”), WMI II, LLC (“WMI II”), McGregor II, LLC (“McGregor II”), Samsonite LLC (“Samsonite”), Gildan USA Inc. (“Gildan”), Dyna-Diggr LLC (“Dyna-Diggr”), Blue Ridge Industrial Support Co. (“Brisco”) and Smokey Mountain Pallet, Inc. (“Smokey Mountain Pallet”) (collectively, the “Defendants”) avers:

1. This is an action to recover the response costs WASCO has incurred as a result of the release or threatened release of hazardous substances at a property known as the Asheville Dyeing and Finishing facility located at 850 Warren Wilson Road in Swannanoa, North Carolina (the “AD&F Facility”). The Defendants are liable for said response costs pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42

U.S.C. § 9601, *et seq.* (“CERCLA”) and the common law of North Carolina. WASCO also seeks Declaratory Judgment under CERCLA as to the Defendants’ liability for future costs.

### **PARTIES AND JURISDICTION**

2. WASCO is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Boston, Massachusetts. WASCO did not cause or contribute to the releases of hazardous substances described herein.

3. Northrop is a corporation incorporated under the laws of the State of Delaware, with its headquarters in Falls Church, Virginia.

4. CNA is a limited liability company organized under the laws of the State of Delaware, with its headquarters in Irving, Texas.

5. Chemtronics is a corporation incorporated under the laws of the State of North Carolina, with its headquarters in Houston, Texas.

6. WMI II is a limited liability company organized under the laws of the State of Delaware, with its headquarters in Denver, Colorado.

7. McGregor II is a limited liability company organized under the laws of the State of Delaware, with its headquarters in Denver, Colorado.

8. Samsonite is a limited liability company organized under the laws of the State of Delaware, with its headquarters in Mansfield, Massachusetts.

9. Gildan is corporation incorporated under the laws of the State of Delaware, with its headquarters in Charleston, South Carolina.

10. Dyna-Diggr is a limited liability company organized under the laws of the state of North Carolina, with its principal place of business in Swannanoa, North Carolina.

11. Brisco is a corporation organized under the laws of the State of North Carolina, with its headquarters in Swannanoa, North Carolina and is the successor in interest to a similarly named North Carolina corporation known as “Brisco, Inc.”

12. Smokey Mountain Pallet is a corporation organized under the laws of the State of North Carolina, with its headquarters in Swannanoa, North Carolina.

13. This Court has subject matter jurisdiction over WASCO’s federal claims under the federal question statute, 28 U.S.C. § 1331, CERCLA, 42 U.S.C. §§ 9607 & 9613, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* This Court has supplemental jurisdiction over WASCO’s remaining state-law claims under 28 U.S.C. § 1367 because the state-law claims arise out of the same case or controversy as WASCO’s federal claims.

14. Venue is appropriate pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 9613 because the Defendants owned and/or operated the AD&F Facility, which is located in this district, because the released hazardous substances that are the subject of WASCO’s CERCLA claims occurred on real property located in this district, and because all Defendants are deemed to reside in this district for the purposes of venue.

## **FACTUAL BACKGROUND**

### **Northrop (Defendant)**

15. Northrop is among the world’s largest weapons manufacturers and is responsible for many contaminated sites in the United States, including in North Carolina.

16. Northrop acquired the AD&F Facility from Celanese Corporation of America on October 1, 1965 and sold it to M. Lowenstein & Sons, Inc. on June 14, 1971 (the “Northrop Ownership Period”).

17. During the Northrop Ownership Period, Northrop exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility.

***Northrop Pollutes the Chemtronics Site***

18. During the Northrop Ownership Period, Northrop manufactured chemical weapons and ammunition at a 1,065-acre manufacturing facility, located at 180 Old Bee Tree Road in Swannanoa, North Carolina, immediately to the north of the AD&F Facility. The United States Environmental Protection Agency (“U.S. EPA”) placed this manufacturing facility on the federal Superfund National Priorities List in 1983, and it is now known as the Chemtronics Superfund Site.

19. Northrop has admitted its liability under Section 107 of CERCLA for wastes it generated and disposed, and the hazardous substances it released, at the Chemtronics Superfund Site. In 1989, U.S. EPA ordered Northrop to remediate the Chemtronics Superfund Site. Measures to remediate Northrop’s releases of hazardous substances at the Chemtronics Superfund Site have included treatment of more than 120 million gallons of contaminated groundwater.

20. The Chemtronics Superfund Site remains on U.S. EPA’s National Priorities List.

***Northrop Pollutes the AD&F Facility with its “Northrop Dump”***

21. Northrop’s contamination of North Carolina’s lands and waters is not limited to the Chemtronics Superfund Site. During the Northrop Ownership Period (1965 to 1971), Northrop systematically and deliberately disposed of industrial wastes it created at the Chemtronics Superfund Site on a one-acre acre portion of the AD&F Facility dubbed the

“Northrop Dump” by the North Carolina Department of Environmental Quality, formerly known as the North Carolina Department of Environment and Natural Resources (“NCDEQ”).

22. Industrial wastes that Northrop deliberately disposed at the Northrop Dump included wastes containing, or contaminated with, hazardous substances used to manufacture tear gas, explosives, flares, rocket propellants and drums containing finished, but rejected, rockets and flares.

23. Northrop also used the Northrop Dump to dispose of 55-gallon drums containing unknown types and quantities of chemical wastes.

24. Abandoned 55-gallon drums are visible on the surface of the land at the Northrop Dump and additional 55-gallon drums are also buried in the Northrop Dump. The total number of abandoned drums in the Northrop Dump is unknown.

25. Northrop’s disposal of the aforesaid industrial wastes and drums in the Northrop Dump has caused releases and/or threatened releases of hazardous substances to the environment.

26. Northrop also burned industrial wastes it generated at the Chemtronics Superfund Site at the Northrop Dump, resulting in additional releases and/or threatened releases of hazardous substances to the environment.

27. The Northrop Dump is approximately 100 feet west of a surface water known as Bee Tree Creek.

28. Releases of hazardous substances associated with Northrop’s disposal of industrial wastes at the AD&F Facility have caused contamination of soil and groundwater at the AD&F Facility and may have caused contamination of surface waters and sediment in Bee Tree Creek.

29. Likewise, Northrop's operations at the Chemtronics Superfund Site have caused releases and threatened releases beyond the boundary of the Chemtronics Superfund Site, including but not limited to Northrop's intentional and regular disposal of industrial wastes, including liquids used to manufacture munitions, into Bee Tree Creek.

**CNA and Chemtronics (Defendants)**

30. CNA and Chemtronics, at various points in time, owned and operated the Chemtronics Superfund Site.

31. CNA and Chemtronics have admitted liability under Section 107 of CERCLA as potentially responsible parties for releases of hazardous substances at the Chemtronics Superfund Site.

32. CNA and Chemtronics' operations at the Chemtronics Superfund Site have caused releases and/or threatened releases beyond the boundaries of the Chemtronics Superfund Site, including but not limited to Bee Tree Creek.

**Construction of the AD&F Facility**

33. M. Lowenstein & Sons, Inc. ("Lowenstein") acquired the AD&F Facility from Northrop on June 14, 1971 and sold it to Winston Mills, Inc. on March 3, 1976.

34. In 1971, Lowenstein constructed the manufacturing structures present at the AD&F Facility today, including but not limited to the AD&F Facility's wastewater treatment system, and began using said structures to manufacture textiles.

**WMI II, McGregor II and Samsonite (Defendants)**

35. WMI II is the successor to an entity known as Winston Mills, Inc. ("Winston Mills") and is liable for the acts and omissions of Winston Mills as stated herein.

36. Winston Mills, which operated under the tradename “Asheville Dyeing & Finishing,” acquired the AD&F Facility from Lowenstein on March 3, 1976 and sold it to an entity known as Anvil Knitwear, Inc. on January 28, 1995 (the “Winston Mills Ownership Period”). As part of the sale, Anvil Knitwear acquired all intellectual property of Winston Mills, including the Asheville Dyeing & Finishing tradename.

37. During the Winston Mills Ownership Period, Winston Mills exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility.

38. Upon information and belief, during the Winston Mills Ownership Period, Winston Mills was a wholly owned subsidiary of McGregor Corporation.

39. McGregor II is the successor entity to McGregor Corporation and is liable for the acts and omissions of McGregor Corporation as stated herein.

40. Upon information and belief, McGregor Corporation exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility during the Winston Mills Ownership Period.

41. Upon information and belief, at all times relevant, Samsonite is, and has been, the sole member and manager of McGregor II.

42. Upon information and belief, Samsonite exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility during the Winston Mills Ownership Period.

***Winston Mills Releases Perchloroethylene from its Waste Tank***

43. Between approximately March 3, 1976 and March 1985, Winston Mills owned and operated two underground storage tanks (“UST”) at the AD&F Facility containing the hazardous substance perchloroethylene (“PCE”).

44. Winston Mills used one of the aforementioned USTs to store unused PCE, and it used the other UST to store waste PCE (the “Waste PCE Tank”).

45. Winston Mills removed both USTs in March 1985.

46. Following the removal of the Waste PCE Tank, NCDEQ alleged that a release of waste PCE into the environment had occurred at some point in the past.

47. On August 29, 1990, Winston Mills and NCDEQ entered into an Administrative Order on Consent regarding the Waste PCE Tank (the “1990 AOC”).

48. The 1990 AOC required Winston Mills to submit a plan to close the former location of the Waste PCE Tank as a hazardous waste landfill as required by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”).

49. The 1990 AOC required Winston Mills to submit a post-closure plan for the long-term care of the former location of the Waste PCE Tank.

50. Winston Mills submitted a combined Closure / Post-Closure Plan for the former location of the Waste PCE Tank to NCDEQ on March 31, 1992.

51. NCDEQ approved said Closure / Post-Closure Plan on July 8, 1992 following a 30-day public comment period regarding said plan pursuant to 40 C.F.R. Part 265.

52. Winston Mills certified the closure of the Waste PCE Tank’s former location as a hazardous waste landfill on December 11, 1992. NCDEQ received the closure certification on December 17, 1992.



53. On March 10, 1993, NCDEQ accepted Winston Mill's certification of closure and instructed Winston Mills to implement the previously approved post-closure plan for the Waste PCE Tank's former location (the "Post-Closure Plan").

54. The approved Post-Closure Plan requires maintenance of the cap placed above the former location of the Waste PCE Tank, the installation of numerous monitoring wells, periodic sampling of those wells for an extensive number of hazardous substances and posting of financial assurance for the estimated costs associated with implementing the Post-Closure Plan.

55. From December 1992 to May 1995, McGregor Corporation posted the financial assurance required pursuant to the approved Post-Closure Plan on behalf of Winston Mills.

***Winston Mills Releases PCE into an 8-inch Drain Line and Bee Tree Creek***

56. On August 12, 1976, Winston Mills caused a spill and subsequent release of 200 gallons of PCE and 50 gallons of a solution containing 10% PCE to the environment (the "1976 PCE Release").

57. The 1976 PCE Release entered an eight-inch drain pipe at the AD&F Facility that ultimately discharged to Bee Tree Creek (the "8-inch Drain Line").

58. The original purpose of the 8-inch Drain Line was to serve as a French drain directing groundwater away from the building that housed the textile manufacturing operations installed at the AD&F Facility by Lowenstein.

59. At an unknown time, and by persons unknown, the 8-inch Drain Line was capped approximately 1,100 feet east of the structures at the AD&F Facility and directed towards a public sewer line.

60. Upon information and belief, the remaining portions of the 8-inch Drain Line may be collecting groundwater contaminated by other releases of hazardous substances at the AD&F Facility and causing additional releases of such hazardous substances to soil, groundwater, surface water and sediment at, and in the vicinity of, the AD&F Facility.

***Winston Mills Creates “Disturbed Soil Areas” at the AD&F Facility***

61. Aerial photos of the AD&F Facility taken in 1988 show, for the first time, two newly-disturbed areas of soil at the AD&F Property.

62. Winston Mills was the sole owner and operator of the AD&F Facility at the time these areas of disturbed soil were first observed.

63. One such area (hereinafter “Disturbed Soil Area A”) is located approximately 100 feet north of the northwest corner parking area at the AD&F Facility and is approximately 45 feet in diameter.

64. The second such area (hereinafter “Disturbed Soil Area B”) is located approximately 60 feet to the east-northeast of Disturbed Soil Area A and is approximately 70 feet wide by 80 feet long.

65. Soil samples taken in the vicinity of Disturbed Soil Area A indicate releases of hazardous substances, including PCE, xylene and toluene have occurred.

66. Upon information and belief, releases of hazardous substances in the vicinity of Disturbed Soil Area A have caused contamination of soil and groundwater at other locations on, or nearby, the AD&F Facility, including but not limited to Disturbed Soil Area B.

### ***Floor and Trench Drains at the AD&F Facility***

67. Upon information and belief, floor drains and trench drains, with related piping, have been present in the manufacturing building at the AD&F Property since its construction by Lowenstein (hereinafter, the “AD&F Floor and Trench Drain System”).

68. Upon information and belief, the purpose of the AD&F Floor and Trench Drain System was – and remains – to drain waste materials contaminated with hazardous substances from work areas in the manufacturing building to the AD&F Facility’s wastewater treatment system.

69. Upon information and belief, wastes generated by Winston Mills and conveyed via the AD&F Floor and Trench Drain System caused releases and/or threatened releases of hazardous substances to the environment.

### ***Floor Drains in the AD&F Facility’s “Dye Mixing Room”***

70. Upon information and belief, Lowenstein constructed a Dye Mixing Room on the second story of the manufacturing building at the AD&F Facility.

71. The Dye Mixing Room includes a secondary containment berm and a drain located on the southern side of said secondary containment area, with related piping (the “Dye Mixing Room Drain”).

72. Upon information and belief, the Dye Mixing Room Drain connects to the AD&F Facility’s underground piping systems, which lead to the AD&F Facility’s wastewater treatment system.

73. Upon information and belief, Winston Mills conveyed hazardous substances through the Dye Mixing Room Drain, and piping connected thereto, to the AD&F Facility’s

wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

***The AD&F Facility's "Tote Farm Floor Drain"***

74. Upon information and belief, Lowenstein constructed a secondary containment area within the AD&F Facility's Dye Receiving Area.

75. Upon information and belief, the purpose of said secondary containment area was to serve as the location of storage for tote containers, used to store hazardous substances used in the mixing of fabric dyes.

76. A floor drain, with related piping, is located in the center of said secondary containment area (hereinafter, the "Tote Farm Floor Drain").

77. Upon information and belief, the Tote Farm Floor Drain connects to the AD&F Facility's underground piping systems, which lead to the AD&F Facility's wastewater treatment system.

78. Upon information and belief, Winston Mills used the Tote Farm Floor Drain, and piping connected thereto, to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

79. Upon information and belief, during the Winston Mills Ownership Period, Winston Mills was the owner and operator of the AD&F Facility at the time other releases of hazardous substances to the environment may have, or did, occur at the AD&F Facility.

**Gildan (Defendant)**

80. Gildan is the successor to an entity known as Anvil Knitwear, Inc. ("Anvil"), and is liable for Anvil's acts and omissions as stated herein.

81. Anvil was the sole owner and operator of the AD&F Facility from January 1995 until December 2007 (the “Anvil Ownership Period”).

82. In December 2007, Anvil sold the AD&F Facility to an entity known as Dyna-Diggr LLC.

83. During the Anvil Ownership Period, Anvil exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility.

84. During the Anvil Ownership Period, Anvil submitted numerous documents to NCDEQ admitting its status as the owner or the owner and operator of the AD&F Facility, including applications for permits required by environmental laws.

85. Upon information and belief, Anvil was the owner and operator of the AD&F Facility during times that the 8-inch Drain Line may have been collecting groundwater contaminated by other releases of hazardous substances at the AD&F Facility and causing additional releases of such hazardous substances to soil, groundwater, surface water and sediment at, and in the vicinity of, the AD&F Facility.

86. Upon information and belief, Anvil was the owner and operator of the AD&F Facility at the time releases of hazardous substances in the vicinity of Disturbed Soil Area A may have caused contamination of soil and groundwater at other locations on, or nearby, the AD&F Facility, including but not limited to Disturbed Soil Area B.

87. Upon information and belief, Anvil actually used the AD&F Floor and Trench Drain System to drain waste materials contaminated with hazardous substances from work areas in the manufacturing building to the AD&F Facility’s wastewater treatment system.

88. Upon information and belief, wastes generated by Anvil and conveyed via the AD&F Floor and Trench Drain System caused releases and/or threatened releases of hazardous substances to the environment.

89. Upon information and belief, Anvil actually used the Dye Mixing Room during the Anvil Ownership Period to store hazardous substances.

90. Upon information and belief, Anvil used the Dye Mixing Room Drain, and piping connected thereto, to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

91. Upon information and belief, Anvil actually used the secondary containment area in the AD&F Facility's Dye Receiving Area during the Anvil Ownership Period.

92. Upon information and belief, Anvil used the Tote Farm Floor Drain to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

93. Upon information and belief, during the Anvil Ownership Period, Anvil was the owner and operator of the AD&F Facility at the time other releases of hazardous substances to the environment may have, or did, occur at the AD&F Facility.

***Installation of Air Sparge / Soil-Vapor Extraction Systems at the AD&F Facility***

94. Between November 1997 and April 1998, an environmental consulting firm known as Mid-Atlantic Associates, Inc. ("Mid-Atlantic") installed an air-sparge / soil-vapor extraction system known as "RS-1" at the AD&F Facility.

95. Upon information and belief, Mid-Atlantic installed RS-1 at the request of Anvil and under the supervision of NCDEQ.

96. In May 2001, Mid-Atlantic installed a second air-sparge / soil-vapor extraction system known as “RS-2” at the AD&F Facility.

97. Upon information and belief, Mid-Atlantic installed RS-2 at the request of Anvil and under the supervision of NCDEQ.

**Dyna-Diggr (Defendant)**

98. Dyna-Diggr LLC (“Dyna-Diggr”) acquired the AD&F Facility from Anvil on December 19, 2007 and has owned the AD&F Facility since that time (the “Dyna-Diggr Ownership Period”).

99. During the Dyna-Diggr Ownership Period, Dyna-Diggr exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility.

100. During the Dyna-Diggr Ownership Period, Dyna-Diggr submitted numerous documents to NCDEQ describing itself as the owner or the owner and operator of the AD&F Facility.

101. Upon information and belief, Dyna-Diggr was the owner and operator of the AD&F Facility during times that the 8-inch Drain Line may have been collecting groundwater contaminated by other releases of hazardous substances at the AD&F Facility and causing additional releases of such hazardous substances to soil, groundwater, surface water and sediment at, and in the vicinity of, the AD&F Facility.

102. Upon information and belief, Dyna-Diggr was the owner and operator of the AD&F Facility at the time releases of hazardous substances in the vicinity of Disturbed Soil Area A may have caused contamination of soil and groundwater at other locations on, or nearby, the AD&F Facility, including but not limited to Disturbed Soil Area B.

103. Upon information and belief, Dyna-Diggr actually used the AD&F Floor and Trench Drain System to drain waste materials contaminated with hazardous substances from work areas in the manufacturing building to the AD&F Facility's wastewater treatment system.

104. Upon information and belief, wastes generated by Dyna-Diggr and conveyed via the AD&F Floor and Trench Drain System caused releases and/or threatened releases of hazardous substances to the environment.

105. Upon information and belief, Dyna-Diggr actually used the Dye Mixing Room during the Dyna-Diggr Ownership Period to store hazardous substances.

106. Upon information and belief, Dyna-Diggr used the Dye Mixing Room Drain, and piping connected thereto, to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

107. Upon information and belief, Dyna-Diggr actually used the secondary containment area in the AD&F Facility's Dye Receiving Area to store hazardous substances during the Dyna-Diggr Ownership Period.

108. Upon information and belief, Dyna-Diggr used the Tote Farm Floor Drain to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

109. Upon information and belief, during the Dyna-Diggr Ownership Period, Dyna-Diggr was the owner and operator of the AD&F Facility at the time other releases of hazardous substances to the environment may have, or did, occur at the AD&F Facility.



**Brisco (Defendant)**

110. At various times during the Dyna-Diggr Ownership Period, Brisco has conducted manufacturing operations in the buildings located at the AD&F Facility.

111. At various times during the Dyna-Diggr Ownership Period, Brisco has exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility.

112. Upon information and belief, at various times during the Dyna-Diggr Ownership Period, Brisco has stated that it is the owner of the AD&F Facility.

113. From June 1, 2008 to at least December 31, 2011, Brisco held a permit to discharge treated wastewater associated with its manufacturing operations at the AD&F Facility.

***Brisco's Mismanagement of Drums and Hazardous Substances***

114. On March 5, 2015, NCDEQ representatives observed that Brisco was storing 83 drums marked as containing "coolant," one drum marked as containing, or having contained, methyl ethyl ketone and one drum marked as containing, or having contained, toluene at the AD&F Facility.

115. On July 28, 2016, WASCO informed NCDEQ that Brisco was improperly storing drums containing waste materials, some of which were leaking, at the AD&F Facility.

116. In response, NCDEQ instructed Brisco to make a waste determination regarding said drums and to arrange for the disposal of any materials deemed to be wastes.

117. On August 10, 2016, NCDEQ received a manifest indicating 63 drums containing approximately 2,375 gallons of oily wastewater had been removed from the AD&F Facility.

118. On May 24, 2017, NCDEQ performed a compliance inspection of the AD&F Facility and observed 24 abandoned 55-gallon drums located on the southwest corner of the AD&F Facility, hidden behind several piles of sawdust.

119. All but one of the aforementioned drums were turned upside down and appeared to have been emptied. One drum was turned right-side up and was partially filled with unknown liquids.

120. Two of the apparently empty drums were labelled “Methyl Ethyl Ketone.”

121. On June 6, 2017, NCDEQ’s inspectors returned to the AD&F Facility and discovered at least seven of the aforementioned drums contained unknown liquids. NCDEQ’s inspectors also observed a dark colored residue on the concrete in the vicinity of said drums.

122. During the June 6, 2017 compliance inspection by NCDEQ, Brisco alleged the 24 drums in question were the responsibility of its former tenant, Smokey Mountain Pallets.

123. Smokey Mountain Pallets subsequently informed NCDEQ that it was not responsible for the 24 drums in question.

124. On June 7, 2017, Brisco told NCDEQ that all 24 drums in question had been emptied and that – to the extent any liquids were present within those drums – the liquids were simply rainwater.

125. NCDEQ rejected Brisco’s claim that the liquids in the drums were rainwater, and on June 15, 2017, NCDEQ issued an “Immediate Action Notice of Violation” to Brisco, requiring Brisco to: (a) characterize the 24 drums in question for disposal; (b) perform an assessment to determine if any of said drums had leaked; and (c) characterize and remove all waste residuals on the concrete pad beneath said drums (the “IANOV”).

126. Based on a September 5, 2017 follow up inspection report prepared by NCDEQ (the “September 2017 NCDEQ Inspection Report”), Brisco disposed of approximately 1,000 gallons of liquids associated with the 24 drums in question as used oil, destined for recycling and disposed of the empty drums as well.

127. The September 2017 NCDEQ Inspection Report does not indicate whether – or to what extent – Brisco performed an assessment to determine whether the 24 drums in question caused releases of hazardous substances to the environment, nor does it describe Brisco’s efforts (if any) to remove the brown residue observed by NCDEQ.

128. Upon information and belief, Brisco’s use and improper management of hazardous substances at the AD&F Facility, as described in the IANOV, caused releases and/or threatened releases of hazardous substances to the environment at the AD&F Facility.

129. Upon information and belief, Brisco was an operator of the AD&F Facility during times that the 8-inch Drain Line may have been collecting groundwater contaminated by other releases of hazardous substances at the AD&F Facility and causing additional releases of such hazardous substances to soil, groundwater, surface water and sediment at, and in the vicinity of, the AD&F Facility.

130. Upon information and belief, Brisco was an operator of the AD&F Facility at the time releases of hazardous substances in the vicinity of Disturbed Soil Area A may have caused contamination of soil and groundwater at other locations on, or nearby, the AD&F Facility, including but not limited to Disturbed Soil Area B.

131. Upon information and belief, Brisco actually used the AD&F Floor and Trench Drain System to drain waste materials contaminated with hazardous substances from work areas in the manufacturing building to the AD&F Facility’s wastewater treatment system.

132. Upon information and belief, wastes generated by Brisco and conveyed via the AD&F Floor and Trench Drain System caused releases and/or threatened releases of hazardous substances to the environment.

133. Upon information and belief, Brisco actually used the Dye Mixing Room during the Dyna-Diggr Ownership Period to store hazardous substances.

134. Upon information and belief, Brisco used the Dye Mixing Room Drain, and piping connected thereto, to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

135. Upon information and belief, Brisco actually used the secondary containment area in the AD&F Facility's Dye Receiving Area to store hazardous substances during the Dyna-Diggr Ownership Period.

136. Upon information and belief, Brisco used the Tote Farm Floor Drain to convey hazardous substances to the AD&F Facility's wastewater treatment system and caused releases and/or threatened releases of hazardous substances to the environment.

137. Upon information and belief, during the Dyna-Diggr Ownership Period, Brisco was an operator of the AD&F Facility at the time other releases of hazardous substances to the environment may have, or did, occur at the AD&F Facility.

**Smokey Mountain Pallet (Defendant)**

138. During a March 5, 2015 compliance inspection of the AD&F Facility by NCDEQ, representatives of Brisco stated Smokey Mountain Pallet had leased a portion of the AD&F Facility for use in the manufacture of wood pallets.

139. During a May 24, 2017 compliance inspection of the AD&F Facility by NCDEQ, representatives of Brisco stated that Smokey Mountain Pallet had abandoned 24 drums at the AD&F Facility after relocating its operations to another location.

140. During a time period of unknown length surrounding the date of March 5, 2015, Smokey Mountain Pallet exercised actual control over matters related to pollution, releases of hazardous substances and environmental compliance at the AD&F Facility.

141. Upon information and belief, during the time that Smokey Mountain Pallet leased the AD&F Facility, it caused releases and/or threatened releases of hazardous substances to the environment at the AD&F Facility.

**WASCO (Plaintiff)**

142. To date, WASCO has incurred a total of at least \$798,649 in response costs at the AD&F Facility associated with (i) funding groundwater monitoring required of Winston Mills under the Post-Closure Plan for the Waste PCE Tank, (ii) funding maintenance of the two air-sparge / soil-vapor extraction systems at the AD&F Facility, (iii) posting financial assurance on behalf of Winston Mills in accordance with Winston Mills' requirements under the approved Post-Closure Plan and (iv) funding the assessment of the Northrop Dump.

143. WASCO never generated, transported, treated, stored, disposed, or arranged for disposal of any hazardous substances at any portion of the AD&F Facility, nor has it caused or contributed to the release of any hazardous substances at the AD&F Facility, including but not limited to the Northrop Dump.

144. Notwithstanding the fact that WASCO did not cause or contribute to the environmental contamination at any part of the AD&F Facility, on November 30, 2018, the Superior Court of Buncombe County, North Carolina issued an order requiring WASCO to

apply for – and abide by the terms of – a RCRA Part B Permit for the AD&F Facility (the “Superior Court Order”). (The Superior Court Order is Exhibit A hereto.)

145. On January 25, 2019, the North Carolina Court of Appeals denied WASCO’s motion seeking a stay of the Superior Court Order. (The Court of Appeals ruling is Exhibit B hereto.)

146. On February 28, 2019, under protest and with full reservation of all rights and legal defenses, WASCO made a good-faith submission of such portions that it could of the application required by the Superior Court Order.

147. On January 7, 2020, the North Carolina Court of Appeals affirmed the Superior Court Order. (The Court of Appeals ruling is Exhibit C hereto.)

148. On or about June 25, 2020, NCDEQ published a draft RCRA Part B Permit for the AD&F Facility (the “Draft Permit”). (The Draft Permit is Exhibit D hereto.)

149. Part IV of the Draft Permit requires WASCO to implement groundwater protection measures and treatment associated with releases of hazardous substances from the Waste PCE Tank.

150. Part V of the Draft Permit requires WASCO to investigate, and as warranted, remediate other releases of hazardous substances at the AD&F Facility, including those associated with the 8-inch Drain Line, Disturbed Soil Areas A and B, the AD&F Floor and Trench Drain System, the Dye Mixing Room Drain and the Tote Farm Floor Drain.

### **FIRST CLAIM FOR RELIEF**

#### **CERCLA Cost Recovery (All Defendants)**

151. WASCO realleges and incorporates herein by reference the allegations set forth in Paragraphs 15 through 150 of the Complaint.

152. WASCO is not a liable party under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

153. Each of the Defendants are a “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and is a liable party under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

154. The AD&F Facility is a “facility” within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

155. WASCO’s previous response costs for the AD&F Facility were necessary and have been consistent with U.S. EPA’s National Contingency Plan, codified at 40 C.F.R. Part 300.

156. Defendants are jointly and severally liable to WASCO for WASCO’s previous response costs at the AD&F Facility.

## **SECOND CLAIM FOR RELIEF**

### **CERCLA Contribution (All Defendants)**

157. WASCO realleges and incorporates herein by reference the allegations set forth in Paragraphs 15 through 156 of the Complaint.

158. WASCO has a right of contribution pursuant to section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against all Defendants to recover response costs that WASCO has incurred to investigate and address releases and/or threatened releases of hazardous substances to the environment at the AD&F Facility.

### **THIRD CLAIM FOR RELIEF**

#### **Equitable Indemnification and/or Contribution (All Defendants)**

159. WASCO realleges and incorporates herein by reference the allegations set forth in Paragraphs 15 through 158 of the Complaint.

160. Pursuant to RCRA, and as a result of Defendants' wrongful conduct at the AD&F Facility, WASCO has been required, and will continue to be required, to incur costs associated with the investigation and future remediation of releases and/or threatened releases of hazardous substances to the environment at the AD&F Facility.

161. WASCO did not cause or contribute to the conditions giving rise to WASCO's costs under RCRA, and its equitable share of such costs should be zero.

162. To the extent WASCO has incurred such costs, or incurs them in the future, WASCO's actual expenses associated with the contamination at the AD&F Facility will be greater than WASCO's share of the fault therefor.

163. WASCO has a right to equitable indemnification and/or contribution to recover from Defendants some or all of the costs it has incurred at the AD&F Facility to date.

164. WASCO is entitled to an order requiring Defendants to reimburse WASCO for any contamination-related costs WASCO incurs for the AD&F Facility in the future.

### **FOURTH CLAIM FOR RELIEF**

#### **Declaratory Relief under CERCLA for Future Response Costs regarding the Northrop Dump (Northrop)**

165. WASCO realleges and incorporates herein by reference the allegations set forth in Paragraphs 15 through 164 of the Complaint.

166. WASCO seeks a judicial declaration pursuant to CERCLA section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Northrop is solely and exclusively liable to WASCO for all future



response costs associated with the investigation and remediation of releases and/or threatened releases of hazardous substances associated with the Northrop Dump.

#### **FIFTH CLAIM FOR RELIEF**

##### **Declaratory Relief under CERCLA for Future Response Costs related to the Chemtronics Superfund Site (Northrop, CNA and Chemtronics)**

167. WASCO realleges and incorporates herein by reference the allegations set forth in Paragraphs 15 to 166 of the Complaint.

168. WASCO seeks a judicial declaration pursuant to CERCLA section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Northrop, CNA and Chemtronics are jointly and severally liable to WASCO for all future response costs associated with the investigation and remediation of releases and/or threatened releases of hazardous substances originating from the Chemtronics Superfund Site and affecting surface waters or sediment in Bee Tree Creek, the Swannanoa River, or both, as well as any related impacts to soil and groundwater.

#### **SIXTH CLAIM FOR RELIEF**

##### **Declaratory Relief under CERCLA for Future Response Costs related to other Releases of Hazardous Substances at the AD&F Facility (Dyna-Diggr, Brisco, Smokey Mountain Pallet, WMI II, McGregor II, Samsonite and Gildan)**

169. WASCO realleges and incorporates herein by reference the allegations set forth in Paragraphs 15 to 168 of the Complaint.

170. WASCO seeks a judicial declaration pursuant to CERCLA section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Dyna-Diggr, Brisco, WMI II, McGregor II, Samsonite, Gildan and Smokey Mountain Pallet are jointly and severally liable to WASCO for all future response costs not addressed by Plaintiff's Fifth and Sixth Claims for Relief.

**JURY DEMAND**

171. WASCO, pursuant to Fed. R. Civ. P. 38, hereby demands a trial by jury on all issues so triable in this action.

**PRAYER FOR RELIEF**

WHEREFORE, WASCO respectfully prays the Court that:

- A. WASCO have and recover its previous response costs associated with the AD&F Facility from Defendants, jointly and severally, in the amount of at least \$798,649;
- B. WASCO be awarded pre-judgment and post-judgment interest on all damages awarded in this action;
- C. The costs of this action and WASCO's attorneys' fees be taxed against Defendants;
- D. The Court enter declaratory judgment as specified in WASCO's Fourth, Fifth and Sixth Claims for Relief; and
- E. WASCO has such other and further relief as the Court shall deem just and proper.

[SIGNATURE PAGE FOLLOWS]

Dated: August 18, 2020

/s/ Sean M. Sullivan

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